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No. 91-1514

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ANNE ARUNDEL COUNTY REPUBLICAN CENTRAL COMMITTEE, *et al.*,

Appellants,

v.

THE STATE ADMINISTRATIVE BOARD OF ELECTION LAWS, *et al.*,

Appellees.

Appeal From the United States District Court for the District of Maryland

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MOTION TO DISMISS OR AFFIRM

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April 20, 1992

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Assuming arguendo that appellants showed that the State did not make a good faith effort to achieve population equality by showing the existence of a bill with a maximum deviation of one person less and an average deviation of .26 persons less than the 10 person and 2.75 person deviation in the bill adopted, are the variances justified by legitimate State policies including keeping major regions intact, creating a minority district and recognizing incumbent representation?

2. Whether Art. I, §2, of the Constitution absolutely precludes legislative consideration of political factors in the fashioning of a congressional redistricting plan?

3. Whether appellants may challenge Maryland's creation of a minority congressional district where no voting rights or racial discrimination claim was raised or decided below and where no party votes or resides in the minority district?

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IN THE
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October Term, 1991

ANNE ARUNDEL COUNTY REPUBLICAN CENTRAL COMMITTEE, et al.,

Appellants,

v.

THE STATE ADMINISTRATIVE BOARD OF ELECTION LAWS, et al.,

Appellees.

Appeal From the United States District Court for the District of Maryland

MOTION TO DISMISS OR AFFIRM

Appellees, the State Administrative Board of Election Laws and Winfield M. Kelly, Jr., in his official capacity as Secretary of State (hereinafter referred to jointly as "the State" or "appellees"), for reasons detailed herein,

urge the Court to dismiss this appeal because it raises no substantial constitutional question. In the alternative, they move that the judgment of the three-judge district court below, reported at 781 F.Supp. 394 (D.Md. 1991) be summarily affirmed.

COUNTER-STATEMENT OF THE CASE

On October 22, 1991, the General Assembly of Maryland passed and, one day later, the Governor signed House Bill 10 ("H.B.10"), the State's congressional redistricting plan.[1] This plan was enacted with bipartisan support and, in terms of population equality, was the best redistricting plan ever adopted by

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[1] The plan will be published as Chapter 4, Laws of 1991 (2nd Special Session). A corrective amendment to the plan, which conforms a geographic description to plan maps, see Jur. State. App. at 6a, n.1, was enacted as part of Chapter 22, Laws of 1992. The plan will be codified in Art. 33 of the Maryland Code, §§22-2 - 22-10.

the State of Maryland. It has an average variance among eight congressional districts of .00046% or 2.75 people and a maximum deviation between population in the highest and lowest districts of .0017% or 10 people.[2]

Development of the Plan

Passage of H.B.10 marked the end of a long process that began in May, 1991, when the Governor appointed a five-member, bipartisan Redistricting Advisory Committee to study and develop redistricting plans for the State. The Committee held 15 public hearings across the State and received numerous recommended plans. Those hearings showed that there was a public consensus for

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[2] These variances were much lower than the census undercount for Maryland. According to the U.S. Census Bureau's June 1991 Post-Enumeration Survey, the State of Maryland has an undercount of 1.8% or 87,532 people.

two things: keeping the three major regions in the State (Western Maryland, Southern Maryland and the Eastern Shore) intact and a minority district in the Washington suburbs.

In August, 1991, the Committee recommended a plan that met these requirements, but which stirred controversy by dividing Baltimore County among five districts and pairing two Republican incumbents (Representatives Bentley and Gilchrest) in the First District.[3] Following a public hearing on September 3, 1991, the Committee proposed a new, less partisan plan. Both of these proposals were embodied in legislation introduced at a special session of the

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[3] Because the plan preserved the State's outer regions and because the minority district was fashioned without an incumbent, it was inevitable that two incumbents would be paired and that one or more counties in the middle of the State would be divided.

Maryland General Assembly that began September 25, 1991. Additional bills were introduced and a number of them were offered as floor amendments.

After weeks of wrangling and conference committee deliberations, H.B.10 emerged as a compromise vehicle. This measure did not pair incumbents of the same party or disadvantage senior Republican or Democrat incumbents. Rather, it pitted the two junior members of the Democratic and Republican parties in the First District. Unlike any measure that previously went to a vote, H.B.10 had solid bipartisan support and its single digit variances improved upon and were the smallest of any bill or amendment voted on by either house. Only House Bill 22 ("H.B.22")[4], which

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[4] This was the Bill relied upon by appellants to show that the State had not complied with the continued

was never offered as a floor amendment, and which was introduced late in the Session after H.B.10 had already gone to conference, had lower variances: a maximum deviation of 9 persons -- one less than H.B.10 -- and an average deviation of 2.49 persons compared to H.B. 10's 2.75. Even the Republican sponsor of H.B.22 voted for H.B.10. The redistricting plan embodied in H.B.10 preserved the State's outer regions and established a minority district, the Fourth Congressional District, in Montgomery and Prince George's Counties without the incumbent Representative Hoyer.

Proceedings Below

On November 12, 1991, appellants, five Anne Arundel County voters and two

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one-person/ one-vote requirements of Art. I, §2. Complaint ¶68, App. at 33a-34a.

political organizations -- the County Republican and Democratic Central Committees, filed suit in the U.S. District Court for Maryland challenging the constitutionality of the congressional redistricting plan. Specifically, the complaint alleged that the plan violated the principles of one person one vote and [was] . . . the product of invidious partisan gerrymandering." Complaint at ¶1. App. at 3a. The heart of appellants' complaint was that Anne Arundel County had been divided among four districts. Jur. State. App. at 8a.[5] The

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[5] At oral argument, the following colloquy occurred between Judge Niemeyer and appellants' counsel:

> Judge Niemeyer: Well, let me ask you this about that, which sounds to me is the crux of your case, is that Anne Arundel County you identify as a community of interest --
>
> Mr. Greiber: Yes, your honor.

continued

appellants alleged no racial discrimination claim under Section 2 of the Voting Rights Act, 42 U.S.C., §1973, or the Fifteenth Amendment to the Constitution; and did not attempt to state a claim of racial discrimination under the Fourteenth Amendment. And appellants pressed no claim on behalf of any candidate or his or her supporters.

The State filed a motion to dismiss and/or summary judgment arguing that the appellants could not demonstrate that the redistricting plan was not the result of a good faith effort to reach precise mathematical equality because within the basic framework of H.B.10,

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Judge Niemeyer: And you argue that that community of interest is diluted by having you become a minority in four other communities of interest.

Mr. Greiber: Yes, your honor.

Transcript at 34.

there was no obvious reduction the Legislature could have made to avoid or significantly reduce variances. In addition, the State contended that the minute variances of H.B.10 were justified by the State's interests in keeping intact the three major regions that surround the State's center, creating a viable minority voting rights district, promoting bipartisan political fairness, splitting as few counties as possible, and avoiding the administrative difficulties caused by splitting election precincts near county boundaries. With respect to the appellants' partisan gerrymandering contention, the State argued that the redistricting plan approved by a bipartisan majority could not be shown to have the effect of shutting any groups out of the political process and that the appellants had

failed to specify any identifiable political group harmed by the plan.

Decision Below

Following a hearing before a three-judge panel, the court by a 2-1 vote upheld the constitutionality of the plan. The majority held that the existence of another plan with a variation of one person less than H.B.10, see p.5, supra, shifted the burden to the State to justify the deviation.[6] Jur. State. App. at 11a. However, the majority concluded that the State had "set forth several convincing, consistent, and legitimate justifications for the numerical deviations within H.B.10." Jur. State. App. at 16a-17a.

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[6] The dissenting judge concluded that there was no significant variance between districts requiring justification by the State. Juris. State. App. at 39a.

> These include: (1) keeping intact the three major regions that surround the center of the state (specifically, the Eastern Shore, Southern, and Western Maryland), (2) creating a minority voting district, and (3) recognizing incumbent representation with its attendant seniority, in the House of Representatives. . . .

Id.

Turning to appellants' second claim, the majority concluded that they had failed to show "[t]he type of partisan discrimination treated in Davis [v. Bandemer]." Jur. State. App. at 27a.[7] In addition, the majority concluded that there was no showing of discriminatory vote dilution. Id. at 35a-36a. The court also rejected the appellants' First Amendment claim, id. at 36a -- an issue not pressed in this Court. The dissenting judge contended that Article

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[7] In fact, both the majority and the dissent point out that the plan was drawn to increase the probability of the reelection of incumbents from both parties. Jur. State. App. at 23a, 74a-76a.

I, §2, unlike the Fourteenth Amendment, requires that the states use "neutral criteria" in drawing congressional district lines. Id. at 69a-70a. On January 21, 1992, appellants noted an appeal to this Court.

REASONS FOR DISMISSAL OR SUMMARY AFFIRMANCE

Except for their assertion that a congressional redistricting claim must be drawn using only "neutral criteria", appellants have not challenged the holding of the district court on one-person/one-vote or on partisan gerrymandering, but instead raise several new claims. None of these new claims are properly before the Court and appellants' claim that a legislature may not consider politics when redistricting does not raise a substantial federal question.

Therefore, the appeal should be dismissed or alternatively the decision should be summarily affirmed.

I. There Is No Substantial Federal Question In This Case Concerning The Adequacy Of The State's Justifications For The Minute Variances In H.B.10.

No substantial federal question is raised concerning the sufficiency of the State's justifications because the appellants failed to meet their burden of proof below to show a lack of a good faith effort to achieve absolute population equality. Specifically, appellants failed to show that the average variance of 2.75 was significant, that any alternative plan had a significantly lower variance or that a lower variance could have been achieved by minor adjustments to the State's plan. To the contrary, the evidence below showed that the General Assembly made a concerted

effort to achieve absolute population equality, with each plan considered coming closer to that goal, and that the variance in the Plan as it passed approached equality "as nearly as is practicable." Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). The appeal should be summarily dismissed for this reason alone.

Assuming arguendo that appellants showed a lack of good faith effort to achieve absolute equality, the district court properly found that the miniscule variances in the Plan were supported by several "convincing, consistent, and legitimate justifications" Jur. State. App. at 16a. One of these justifications, creating districts based on the Eastern Shore, Western Maryland, and Southern Maryland, has not been questioned by appellants at any stage of

this litigation and is in itself sufficient to justify the minor variances in the Plan. Thus, alternatively, the decision of the district court should be summarily affirmed.

II. A Congressional Redistricting Plan Is Not Somehow Tainted And Thereby Rendered Unconstitutional Simply Because Politics Played A Role In The Development Of The Plan.

A. There is no requirement in Art. I, §2, that a congressional redistricting plan use only neutral criteria.

Appellants' major premise, derived from the dissenting judge's opinion, that Article I, §2, requires a state to use only "neutral" criteria in developing a congressional redistricting plan, has been repeatedly rejected by this Court during the last two decades. See, e.g., White v. Weiser, 412 U.S. 783, 796 (1973) ("Districting inevitably has sharp political impact and inevitably political decisions must be made by

those charged with the task."). In fact, this Court has specifically rejected any suggestion, that redistricting must be done using a "politcally mindless approach." Gaffney v. Cummings, 412 U.S. 735, 753 (1973).

In Gaffney, this Court recognized that a legislature will have and use the type of political information about voters that the appellants and the dissenting opinion below allege make H.B.10 unconstitutional.

> The political profile of a State, its party registration, and voting records are available precinct by precinct, ward by ward.
>
> * * *
>
> [I]t requires no special genius to recognize the political consequences of drawing a district line along one street rather than another. It is not only obvious but absolutely unavoidable that the location and shape of districts may well determine the political complexion of the area. District lines are rarely neutral phenomena. They can well determine what district will be predominantly

> Democratic or predominantly Republican, or make a close race likely. Redistricting may pit incumbents against one another or make very difficult the election of the most experienced legislator.

412 U.S. at 753 (emphasis added).

This Court has consistently made clear that those charged with the task of congressional redistricting are state political bodies, and that a federal court should, wherever possible, defer to a state legislative judgment on districting. See, e.g., White v. Weiser, 412 U.S. at 794-95 and cases cited therein. Requiring that congressional districts be drawn using only neutral criteria, "virtually guarantees that a federal court, in a sort of judicial receivership, will ultimately conduct redistricting," Jur. State. App. at 25a. To avoid having federal courts usurp a legislative body's redistricting plan, the political considerations embodied in

that plan should not to be set aside by the federal judiciary absent solid constitutional or statutory grounds for doing so. White v. Weiser, 412 at 796.

Appellants and the dissent below rely upon one sentence in Wesberry v. Sanders, 376 U.S. 1, 17-18 (1963), to argue that notwithstanding Gaffney and Davis v. Bandemer, 478 U.S. 109 (1986), a state legislature may not use political considerations when it is undertaking congressional redistricting. Jur. State. App. at 63a. However, as the majority below points out, political considerations are as legitimately a part of congressional redistricting as they are a part of legislative redistricting.

> The idea that Art. I, §2, prohibits taking any 'political' factors into account is flatly contradicted by the language in Karcher [v. Daggett, 462 U.S. 725 (1983)].

> "We have never denied that apportionment is a political process, or that state legislatures could pursue legitimate secondary objectives as long as those objectives were consistent with a good-faith effort to achieve population equality at the same time." 462 U.S. at 739.

(Jur. State. App. at 20a). In fact, the Karcher court clearly stated that political considerations, such as "avoiding contests between incumbent Representatives" are "legitimate objectives." Id. at 740.

It is preposterous to suggest that "political considerations which [this Court has held] constitute appropriate justifications under Karcher's second prong somehow violate Art. I, §2, or other federal constitutional mandates, or both." Jur. State. App. at 34a. This Court "would hardly have put its stamp of approval on a justification under Karcher's second prong, if such

justification were constitutionally invalid for any other reason." Id. at 34a-35a. See also Upham v. Seamon, 456 U.S. 37, 39-41 (1982) (District Court erred in not deferring to legislative judgment to formulate the creation of a "safe" minority district.) As the lower court in Badham v. Eu, 488 U.S. 1024 (1989) (mem.), affirming 694 F.Supp. 664 (N.D.Calif. 1988), recognized, this Court's decisions in Kirkpatrick v. Preisler, 394 U.S. 526, 534, reh. denied, 395 U.S. 917 (1969), and Karcher, 462 U.S. at 734 n.6 are "inconsistent with the notion that partisan gerrymandering is itself an Article I, §2 violation." Badham, 694 F.Supp. at 674. Here the evidence showed that political considerations led to a plan designed to provide a "safe" seat to both Democratic and Republican

incumbents.[8] The only incumbents pitted against each other were junior congressmen from each party. Appellants' bipartisan challenge to this bipartisan plan does not present a substantial federal question.[9]

B. Appellants are not a cognizable group and did not show dilution of their vote by an unconstitutional partisan gerrymander.

As the majority below recognized the "heart of the plaintiffs' argument

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[8] Although the Court found that the State had drawn the district lines in part in order to provide Congressman Hoyer, "the fourth ranked Democratic member of the United States Congress" a "safe" seat, there was testimony from the Speaker of the House and the President of the Senate that his district was far from safe, Transcript at 82, and providing Hoyer a safe seat was not one of the justifications put forward by the State, State's Memorandum at 24.

[9] H.B. 10 was truly a bipartisan bill. In the Senate, the vote was 36-10, with 8 of 9 Republicans and 28 of 37 Democrats voting for it. In the House, the vote was 110-22, with 22 of 24 Republicans and 88 of 108 Democrats voting for it.

is that Anne Arundel County . . . has been divided by H.B. 10 among four separate . . . congressional districts, thus 'diluting' the votes of the residents." Jur. State. App. at 8a. "In essence, . . . the plaintiffs contend that they, as Anne Arundel County voters, have some form of constitutionally significant community interest which will be diluted if H.B. 10 goes into effect." Jur. State. App. at 28a. However, the "nebulous and unworkable" concept of "communit[y] of interest", In re Legislative Districting, 299 Md. 658, 692 (1984), has no constitutional protection. Kirkpatrick v. Preisler, 394 U.S. at 533. Thus, whether to recognize a community of interest such as a political subdivision is a decision to be made by a state legislature. See Karcher v. Daggett, 462 U.S. at 733 n.5;

Alton v. Tawes, 384 U.S. 315 (1966), affirming Maryland Citizens for Fair Congressional Redistricting v. Tawes, 253 F.Supp. 731 (D.Md.) (Upholding court-ordered plan that split Anne Arundel County among three congressional districts).

Even if this Court were prepared to consider overruling its long line of cases holding that political considerations are legitimately taken into account by a legislature undertaking congressional redistricting, this appeal should nonetheless be dismissed because appellants are not a cognizable group, and assuming arguendo that they are such a group, they have failed to identify any harm they have suffered. The record is devoid of any evidence that plaintiffs' votes have been diluted. "Nothing the plaintiffs have presented

to this Court indicates that their vote will necessarily be any less powerful in any of the four congressional districts in which they will now reside [than it was when they all resided in one district]."[10] Jur. State. App. at 35a.

Under no circumstances will allegations that political considerations played a role in developing a plan, without any allegations that the effect is to discriminate against a cognizable group, require a federal court to find the plan unconstitutional. Davis v. Bandemer, 478 U.S. 109, 127 (1986); Badham v. Eu, 694 F.Supp. 664, aff'd, 488 U.S. 1024. See also Weiser, 412 U.S.

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[10] The dissent argues at length that Art. I, §2, does not permit districting that favors one class of voters over another class, Jur. State. App. at 41a, 44a, 46a, 58a, 64a); however, nowhere does the dissent identify the class of voters to which plaintiffs belong or identify how their vote is diluted.

at 797; Burns v. Richardson, 384 U.S. 73, 89 n.16 (1966) ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.").

Even in the area of race discrimination, intent is not enough, there must also be evidence of discriminatory effect. See, e.g., Palmer v. Thompson, 403 U.S. 217, 224-25 (1971). Cf. United States v. O'Brien, 391 U.S. 367, 384-85 (1968) (Legislation is not unconstitutional solely because it was enacted with an improper purpose.) Burns v. Richardson, 384 U.S. at 88 (Multi-member districts will constitute invidious discrimination only if it "would operate to minimize or cancel out the voting strength of racial or political elements

of the voting population.", quoting Forston v. Dorsey, 379 U.S. 433, 439 (1965)).

Finally, to hold that Art. I, §2, requires a state to use "neutral" criteria when districting, would overrule the cases that hold that compactness, contiguity, community of interests, and boundaries of political subdivisions are not constitutionally required in congressional districting. See, e.g., Wood v. Broom, 287 U.S. 1 (1932); Kirkpatrick v. Preisler, 394 U.S. at 536 ("Modern developments and improvements in transportation and communications make rather hollow, in the [early 1990's concerns about] . . . geographical considerations."); Karcher v. Daggett, 462 U.S. at 734 n.6 (suggesting that guidelines as to compactness, contiguity, boundaries of political subdivisions, and

communities of interest are best left to states.)

The majority below correctly rejected plaintiffs' claim that Art. I, §2, absolutely precludes consideration of political factors in the development of a congressional redistricting plan. The Maryland plan treats both Democratic and Republican incumbents fairly and excludes no group from the political process. This Court should dismiss this appeal as there is no substantial federal question of unconstitutional partisan gerrymandering.

III. Appellants' Claim That A Minority District Was Improperly Created Is Not Before This Court.

Appellants argue that the State could not create a minority voting district because it did not first find that one was required by the Voting Rights Act. In appellants' view, intentional

creation of a district that is not majority white without making such a finding dilutes the votes of white voters. Appellants have not raised a substantial federal question by this claim because not only is this plainly not the law, the issue was not raised below, and appellants did not have standing to raise the issue in any event.

This issue should not be considered because it was not raised or decided below. Equal Employment Opportunity Commission v. Federal Labor Relations Authority, 476 U.S. 19, 23 (1986); Rogers v. Lodge, 458 U.S. 613, 628, n.10 (1982). The complaint in this case is completely devoid of any discussion of racial gerrymandering or dilution of the votes of white voters and does not even mention the race of any of the plain-

tiffs. Appellants' pleadings below mentioned the issue only tangentially in addressing the State's justifications, and the district court decided the issue only in that context, holding that creation of a minority district could "constitute an appropriate Karcher second-prong basis", Jur. State. App. at 23a-24a. Further, appellants filed an alternative plan with their complaint that included a minority district in the same geographical area. Transcript at 30.[11] The only difference was that

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[11] The State would have had to go out of its way to not have a minority district in the Washington suburbs. Prince George's County, which is the largest county in new minority Fourth District, has a majority black population according to U.S. Census figures. See Maryland Precinct Population Data for Redistricting, 1990 Census (May, 1991) at 19A. In addition, the minority district established had a black voting age population of only 55.8%. See 1991 Congressional District: Population and Housing Characteristics -- April, 1992 at 5 -- hardly a "super majority" as contended by appellants.

the white incumbent was in the district in appellants' plan. Thus, appellants' real argument is that the State could not protect an incumbent; however, as the majority below noted, the aim of giving "Congressman Hoyer, a congressman with high ranking and importance in the federal House of Representatives, a 'safe seat', Jur. State. App. at 22a, is "clearly within Karcher's ambit." Id. at 23a.

During their argument in rebuttal, in response to a question by Judge Smalkin, appellants asserted for the first time that creation of a minority district diluted the votes of whites who lived in the new minority district. Transcript at 115. Assuming arguendo that such a claim could have merit had it been properly raised below, appellants in this case cannot assert it

because all of them are residents of Anne Arundel County, Complaint, ¶¶7-13, App. at 6a-11a, no part of which is in the Fourth District, the new minority district. In order to establish standing, it is necessary to show that a party before the Court has suffered or will suffer some legal wrong. Air Courier Conference v. American Postal Workers Union, ___ U.S. ___, 111 S.Ct. 913 (1991). Thus, this Court has recognized that voters in a district that is adversely affected by an alleged unconstitutionality in a challenged redistricting plan have standing, Baker v. Carr, 369 U.S. 186, 206 (1962), but has not extended that holding to voters who are not affected or who benefit, Id. at 90, n.23; Tribe, American Constitutional Law §3-16, n.41 (2nd ed. 1988). Since appellants are not residents of the new

minority district, they lack standing to challenge the validity of the minority district.

Assuming arguendo the issue had been properly raised, and that appellants had standing, in order to make out a claim that creation of the minority district violated the rights of white persons under either the equal protection clause of the Fourteenth Amendment, appellants needed to show a discriminatory effect. White v. Regester, 412 U.S. 755, 766 (1973) (Plaintiffs claiming that a districting plan is discriminatory must prove "that the political processes leading to nomination and election were not equally open to participation by the group in question."); Thornburg v. Gingles, 478 U.S. 30 (1986)

(same required by Section 2 of the Voting Rights Act).[12] No evidence was presented below that would support a claim that any person's vote was diluted by the creation of the minority district. Specifically, appellants introduced no evidence of polarized voting.[13] Without such polarized voting, dilution of white votes could not be shown. Thornburg v. Gingles, 478 U.S. at 46 ("[T]he results test [of Section 2 of the Voting Rights Act] does not assume the existence of racial bloc voting; plaintiffs must prove it." (citation omitted)). Further, contrary to

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12 Appellants also need to prove racially discriminatory intent to state an equal protection claim, City of Mobile v. Bolden, 446 U.S. 55 (1980); however, no evidence of discriminatory intent was introduced.

13 In fact, appellants have argued, without supporting evidence, that voting in Prince George's County is not racially polarized. Jurisdictional Statement at 18.

appellants' assertions, United Jewish Organizations v. Carey, 430 U.S. 144 (1977), does permit race-conscious districting in the absence of discriminatory purpose or effect. Id. at 168 (Plurality Opinion of White, J., joined by Justices Stevens and Rehnquist) and id. at 179-80 (Stewart, J., concurring opinion in which Justice Powell concurred). See also Jordan v. Winter, 604 F.Supp. 807 (N.D.Miss.), aff'd, 469 U.S. 1002 (1984) (rejecting constitutional attack on §2 of Voting Rights Act); Garza v. County of Los Angeles, 918 F.2d 763, 776 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991) (same).

For all these reasons, appellants' claim that it was improper for the State to create a minority district should be dismissed.

IV. A Claim That The Plan Discriminated Among Incumbents Is Not Properly Before This Court.

Appellants also argue that the Fourteenth Amendment rights of certain of Maryland's Congressional representatives were violated because they were classified on the basis of seniority. No member of Maryland's Congressional delegation is a party to this case, and appellants do not have standing to assert their rights. Air Courier Conference v. American Postal Workers' Union, ____ U.S. at ____, 111 S.Ct. at 921. In addition, this issue was not raised in the Complaint in this case, nor in the pleadings below, and it was not decided by the district court and is, therefore, not properly before this Court. See DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 194, n.2 (1989); Youngberg v.

Romeo, 457 U.S. 307, 316 n.19 (1982); Dothard v. Rawlinson, 433 U.S. 321, 323 n.1 (1977); Adickes v. S.H. Kress & Co., 398 U.S. 144, 147 n.2 (1970).[14]

CONCLUSION

For all of these reasons, the State contends that none of the issues actually raised and decided below merit plenary review by this Court or even implicit acknowledgement by affirmance, that they are substantial constitutional questions. A bipartisan congressional redistricting plan with microscopic and justifiable variances is not the kind of state law that requires intense scrutiny by a federal court. Rather, Maryland

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[14] Even if it had been properly raised it is not worthy of review. The lower courts have recognized that a representative has no constitutionally protected interest in representing any particular constituency. City of Philadelphia v. Klutznick, 503 F.Supp. 663, 672 (E.D.Pa. 1980); Shapiro v. State of Maryland, 336 F.Supp. 1205, 1210 (D.Md. 1972).

urges that the appropriate response to this appeal is to dismiss for want of a substantial federal question.

Respectfully submitted,

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APPENDIX

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Complaint,
filed November 12, 1991.....1a-41a

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANNE ARUNDEL COUNTY REPUBLICAN CENTRAL COMMITTEE 3329 Oak Drive Edgewater, MD 21037	*	
and	*	CIVIL ACTION NO.
LAURA GREEN TREFFER 3329 Oak Drive Edgewater, MD 21037	*	VERIFIED COMPLAINT
and	*	AND REQUEST FOR A THREE
ANNE ARUNDEL COUNTY DEMOCRATIC CENTRAL COMMITTEE 438 Severnside Drive Severna Park, MD 21146	*	JUDGE PANEL
and	*	
KIMBERLY ANNE McCOY 438 Severnside Drive Severna Park, MD 21403	*	
and	*	
ROGER W. MOYER 419 5th Street Annapolis, MD 21403	*	
and	*	
ROBERT C. SCHAEFFER 799 Dividing Road Severna Park, MD 21146	*	
and	*	

E. LIBBY RAMSBOTTOM *
8060 Telegraph Road
Severn, MD 21144 *

Plaintiffs *

vs. *

THE STATE ADMINISTRATIVE *
BOARD OF ELECTION LAWS
P.O. Box 231 *
11 Bladen Street
Annapolis, MD 21404 *
James W. Johnson, Jr.,
Chairman *
Gene M. Raynor,
Administrator *

and *

WINFIELD M. KELLY, JR. *
in his official capacity
as Secretary of State *
State House
Annapolis, MD 21401 *

and *

BOARD OF SUPERVISORS OF *
ELECTION OF ANNE ARUNDEL
COUNTY *
11 Bladen Street
Annapolis, MD 21401 *

Defendants *

* * * * * * * *

COMPLAINT

Plaintiffs, by their attorney, John R. Greiber, Jr., Esq., hereby sue the above-named Defendants and say:

INTRODUCTION

1. Plaintiffs bring this action for declaratory relief seeking to have the enrolled House Bill 10 of the Maryland General Assembly (hereinafter "HB 10") which established the boundaries for the election of members of the United States House of Representatives from the State of Maryland be declared unconstitutional, and therefore, null and void. Without this Court's action, rights secured to the people of Maryland pursuant to Article I, Section 2 of the Constitution of the United States, and the First and Fourteenth Amendments of that Constitution, protectable under 42 U.S.C. Section 1983, will be violated as the congressional districts are no longer apportioned according to the principle of one person one vote and are the product of

arbitrary and invidious partisan gerrymandering. This Court's assistance is necessary in order to have a valid constitutional plan in place for an orderly election process in 1992.

2. This action also seeks injunctive relief prohibiting defendants from conducting congressional elections based on the districting plan contained in HB 10.

3. This action also seeks such other and further relief as the Court deems appropriate and necessary.

JURISDICTION

4. This Court's jurisdiction is founded upon:

a. 28 U.S.C. Section 2284(a) in that this is a challenge to the constitutionality of the apportionment of congressional districts in the State of Maryland. Furthermore, in accordance

with 28 U.S.C. Section 2284 (b)(2), notice of this action has been given to the Governor and the Attorney General of the State of Maryland by sending each, via certified mail, a copy of this Complaint; and

b. 28 U.S.C. Section 1331 in that this is an action which arises under the laws and Constitution of the United States, including the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to that Constitution, and the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202; and

c. 28 U.S.C. Section 1343(3) and (4), and 42 U.S.C. Section 1983 in that this is an action to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States and to secure equitable relief for protection of civil rights, including the right to vote.

VENUE

5. Venue is proper pursuant to 28 U.S.C. Section 1391(b) in that the claims which are the subject of this complaint arose in this District as did the acts and transactions constituting violations of plaintiffs' rights, and all parties reside in this District.

REQUEST FOR THREE-JUDGE PANEL

6. Pursuant to 28 U.S.C. Section 284(a), convocation of a three-judge district court is requested as this action challenges the constitutionality of the present apportionment of congressional districts in the State of Maryland.

THE PARTIES

7. Anne Arundel County Republican

Central Committee is an unincorporated political organization whose members engage in any and all activities necessary to ensure that their political ideas and statements fairly and effectively influence the political and election processes.

8. Laura Green Treffer is chairperson of the Anne Arundel County Republican Central Committee and is a resident of Anne Arundel County and a registered voter in the 1st Congressional District as identified in HB 10.

9. Anne Arundel County Democratic Central Committee is an unincorporated political organization whose members engage in any and all activities necessary to ensure that their political ideas and statements fairly and effectively influence and political and election processes.

10. Kimberly Ann McCoy is chairperson of the Anne Arundel County

Democratic Central Committee and is a resident of Anne Arundel County and a registered voter in the 1st Congressional District as identified in HB 10.

11. Plaintiff Roger W. Moyer is a resident of Anne Arundel County and a registered voter in the 1st Congressional District as identified in HB 10.

12. Plaintiff Robert C. Schaeffer is a resident of Anne Arundel County and a registered voter in the 2nd Congressional District as identified in HB 10.

13. Plaintiff E. Libby Ramsbottom is a resident of Anne Arundel County and a registered voter in the 5th Congressional District as identified in HB 10.

Defendants

13a. The defendant State Administrative Board of Election Laws was created by state statute. The membership of the board is appointed by the Governor. Among the responsibilities of the board is the duty to

maintain election records and other relevant election information and to supervise the conduct of elections throughout the state. In that capacity the board plays a role in the implementation, application and enforcement of the redistricting plan which is the subject of this litigation.

13b. The defendant James J. Johnson, Jr. is the Chairman of the State Administrative Board of Elections.

13c. The defendant Gene M. Raynor is the State Administrator of Election Laws.

13d. The defendant Winfield M. Kelly, Jr. is the Secretary of State for the State of Maryland. Among the responsibilities of the Secretary is the placing on the ballots for election the names of those individuals authorized and approved as candidates. As such, his office has a role in the administration of the elections for the U.S. House

of Representatives.

13e. The defendant Board of Supervisors of Elections of Laws of Anne Arundel County is under the auspice of the State Administrative Board of Election Laws and is responsible for maintaining election records and other relevant election information necessary to conduct state and congressional elections within Anne Arundel County. In that capacity the board plays a role in the implementation, application and enforcement of the redistricting plan which is the subject of this litigation.

THE FACTS

14. The United States Constitution, Article 1, Section 2, Clause 3 requires that the members of the House of Representatives be apportioned among the states based on population determined by a decennial census.

15. The decennial census conducted

in 1980 resulted in the allocation of eight (8) congressional seats to Maryland. Following the 1980 census, a redistricting plan was adopted. A copy of the congressional district map based on the 1980 census is attached hereto and incorporated by reference as Exhibit A.

16. Pursuant to 13 U.S.C. Section 141, a census was taken in 1990 for the purpose of determining the official population of the several states. The official population of Maryland was determined to be 4,781,468. The results of the census were reported to the Governor of Maryland for use in the apportionment of congressional districts as required by Section 141(c).

17. Pursuant to 2 U.S.C. Section 2a(b), the four hundred thirty-five seats in the United States House of Representatives were allocated among the fifty states on the basis of popula-

tion. Maryland was assigned eight (8) seats, the same number assigned as a result of the preceding census.

18. Assuming exactly equal population for each of the eight congressional seats, the ideal district following the 1990 census should contain 597,683 people.

19. In May, 1991, the Governor established a five-member Redistricting Advisory Committee (hereinafter "The Advisory Committee"). The Maryland Manual (1991-1992, p.486) described the purpose of the Advisory Committee as follows: "The Committee will make recommendations to the Governor and General Assembly on boundary changes for legislative and Congressional election districts. The changes are to reflect shifts in Maryland's population as recorded in the federal census of 1990."

20. The Advisory Committee consisted of the following members:

Chairman Benjamin L. Brown of Baltimore City, Norman Glascow of Montgomery County, Donna Feeling of Baltimore County, and, representing the Maryland General Assembly, R. Clayton Mitchell, Jr., Speaker of the House of Delegates (hereinafter "Speaker Mitchell") and Thomas V. "Mike" Miller, President of the Senate (hereinafter "Senator Mitchell").

21. The first order of business of the Advisory Committee was to adopt appropriate guidelines by which to review various redistricting proposals. The guidelines set forth the following general criteria to be considered during the redistricting process: equal representation, equal population, minority representation, contiguity, compactness, recognition of boundaries of political subdivisions, natural boundaries, precinct lines, communities of interest, and subdistricting. A copy of the

guidelines is attached hereto and incorporated by reference as Exhibit B.

22. By letter dated June 18, 1991, Speaker Mitchell urged members of the House of Delegates, specifically delegation leaders. to follow the guidelines adopted by the Advisory Committee. Furthermore, he stated that, in following the guidelines, the final plan would be strengthened by the "concerted effort to recognize and preserve the integrity of counties to the maximum extent possible, by being congnizant of communities of interest, and by retaining as much as possible the cores of existing districts." A copy of the letter from Speaker R. Clayton Mitchell, Jr., to Delegate John C. Astle is attached hereto and incorporated by reference as Exhibit C.

23. On or about August 22, 1991, the Advisory Committee unveiled its initial redistricting plan which kept

all of Anne Arundel County in the 4th Congressional District, with the exception of 14,000 residents in the southernmost precincts. Prior to the release of its plan, the Advisory Committee rejected numerous others, including a proposal by the majority of the State's congressional delegation, which would have split Anne Arundel County into as many as three districts.

24. On or about September 19, 1991, while Senator Miller was in Ireland, and just prior to the convening of the Special Session on Redistricting, Speaker Mitchell abandoned the Advisory Committee's first plan and stewarded a second plan, which received approval of the Advisory Committee by a 3-1 vote, Senator Miller being absent.

25. The action taken by Speaker Mitchell set the stage for a rancorous dispute between the respective leaders of the General Assembly.

26. A special session of the General Assembly for the purpose of considering and passing redistricting legislation was called by the Governor; the session was to convene on or about September 25, 1991.

27. The division between the leaders of the General Assembly resulted in the proceedings of the special session being described by one senator as "a zoo" (Sen. M.J. Wagner), and prompted another senator to sarcastically urge his colleagues to record their meetings so that "[their] stellar performance [could] be aired on public radio" (Sen. J.A. Cade).

28. Perhaps most prophetic, one delegate observed that the process would be "purely political" and that it was "an exercise in self-protection and political greed (Del. M. E. Busch).

29. Concerning the effect of the partisan political process on Anne

Arundel County, one senator (Sen. J.A. Cade) remarked that the county was "at a point where we're deciding whether to be shot, stabbed or hung..."

30. After contentious voting sessions, committees in the Senate and House of Delegates approved conflicting redistricting bills. The two bills crossed into the opposite houses of the legislature, where each was rejected.

31. On or about September 26, 1991, the deadlock over the redistricting issue caused Speaker Mitchell to abruptly recess the House until October 21, 1991. After the House recessed, the Senate amended the House plan to make it identical to the Senate version.

32. On or about October 3, 1991, the House of Delegates, pursuant to an opinion rendered by the Office of the Attorney General that its recess was violative of the State Constitution, reconvened and the General Assembly

resumed the debate over redistricting.

33. On or about October 10, 1991, the General Assembly moved to break the deadlock by appointment of a joint House-Senate Conference Committee (hereinafter "The Conference Committee") to resolve the redistricting issue.

34. The Conference Committee consisted of the following members: Senator Miller, Democrat, Prince George's County; Senator John A. Pica, Democrat, Baltimore City; Senate Majority Leader Clarence Blount, Democrat, Baltimore City; House Majority Whip Nancy Kopp, Democrat, Montgomery County, and Delegate John S. Arnick, Democrat, Baltimore County.

35. The Conference Committee did not include a minority party representative or any representative from Anne Arundel County.

36. On or about Friday, October 18, 1991, the Conference Committee

reached an impasse, and Speaker Mitchell threatened to adjourn the House sine die and let the redistricting issue be resolved by the federal courts.

37. During the ensuing weekend, another redistricting plan was drafted (HB 10) which divided Anne Arundel County among four congressional districts. Under the plan, 239,617 County residents were placed into the Eastern Shore' 1st Congressional District; 45,283 County residents were placed in the 2nd Congressional District (which cannot be reached from Anne Arundel County by land without travelling throughout at least two other Congressional Districts; however, it is directly accessible to yachtsmen); 64,081 County residents were placed in the 3rd Congressional District; and 78,528 County residents were placed in the 5th Congressional District. The plan ensured that the County residents

would not constitute a majority of the population in any of the four districts. A copy of HB 10 is attached hereto and incorporated by reference as Exhibit D.

38. Despite the fact that only members of the Conference Committee had knowledge of the content and effect of the plan, the General Assembly was scheduled to vote on the proposal on Monday, October 21, 1991 at 5:00 p.m.

39. In the absence of the customary written report, Senator Miller instructed Senator John Pica to give an oral report concerning HB 10.

40. After the approximate three minute oral report, members of the Anne Arundel County Senate delegation (hereinafter "the delegation") requested a recess prior to voting in order to obtain and consider the final printed copy of HB 10 which was not then available.

41. The Senate was recessed until

7:00 p.m. with the assurance from Senator Miller that final copies of the bill and supporting statistical data would be provided.

42. At approximately 5:45 p.m., incomplete and coded information sheets, without statistical data, were slid under the office doors of the members of the delegation.

43. After the Senate reconvened at approximately 7:00 p.m., a subsequent ten minute recess was granted at the request of the delegation, which had been told by Senator Miller that the plan was not subject to change.

44. In an effort to assess the impact of HB 10, the delegation began a filibuster.

45. The filibuster was ended at 11:45 p.m. when Senator Miller successfully moved to limit debate.

46. At 11:45 p.m., the Conference Committee Report was adopted by the

Senate and passed third and final reading by a vote of 36 to 10.

47. During the same time period, members of the House of Delegates, including the delegates from Anne Arundel County, received similar treatment. As in the Senate, no copies of HB 10 were available for review, and, because of the Senate filibuster, the House was recessed until October 22, 1991.

48. On October 22, 1991, the House of Delegates convened to vote on HB 10, and, after limited debate on the absence of any good faith effort underlying the bill, as evidenced by the splitting of precincts for as few as twenty or thirty residents, and the fragmenting of Anne Arundel County (especially the placement of a portion of the County in the 2nd Congressional District which is separated from the rest of the County by two other congressional districts and a

large body of water), the plan was adopted and passed on third and final reading by a vote of 110-22.

49. The enrolled HB 10 has a total population variance between the largest and smallest districts of 8,790 persons, and the average deviation between all districts is 1,098.75 persons.

50. Additionally, the House passed plan, inter alia, creates districts which are not contiguous or compact; divides counties into unnecessary fragments; fails to recognize communities of common social and economic interests; fails to recognize recent shifts in population; fails to preserve the core constituencies of preexisting districts; fails to recognize the right of political groups or associations to effectively influence and participate in the political process; and arbitrarily and invidiously debases and dilutes the votes of the residents of Anne Arundel

County by the unnecessary splitting of their County into four congressional districts.

51. The unnecessary splitting of Anne Arundel County has resulted in the conversion of the voters in the State's fourth most populous county into a minority voice in each of the four newly created congressional districts, thereby cancelling out or minimizing their voting strength.

52. Pursuant to state law, all candidates for the House of Representatives must declare their official candidacy for a specific congressional district on or before December 23, 1991.

53. Pursuant to state law, the congressional primary elections for party nominations is scheduled for March 3, 1992. The general election for the House of Representatives is scheduled for November 3, 1992.

54. By performing their respective

duties with regard to the challenged redistricting legislation, defendants, in their respective official capacities, have acted and will act under color of state law and official right.

55. The matter before the Court is appropriate of resolution because there is a substantial controversy between the parties having adverse legal interests of immediacy and reality.

CAUSE OF ACTION

Paragraphs 1 through 55 are hereby incorporated by reference as though fully set forth herein.

56. Article I, Section 2 of the Constitution of the United States provides in pertinent part:

> 1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several states . . . .

In addition, Section 1 of the Fourteenth Amendment to the Constitution of the

United States provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

These provisions of the Constitution guarantee to the citizens of the State of Maryland the right to vote in congressional elections, and require that the vote of each citizen be equally effective and be worth as much as any other vote cast in such elections.

57. The United States Supreme Court has held that Article I, Section 2 commands "that States create congressional districts which provide equal representation for equal numbers of people" and that "only the limited population variances which are unavoidable despite a good-faith effort to

achieve absolute equality, and for which justification is shown" are permitted. Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969).

58. The Supreme Court has also held that, although there are any number of consistently applied legislative policies which might justify some variance, the State must "show with some specificity that a particular objective required the specific deviation in its plan, rather than simply relying on general assertions." Karcher v. Daggett, 462 U.S. 725, 740-41 (1983).

59. The Supreme Court has long recognized that "the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system," Reynolds v. Sims, 377 U.S. 533, 562 (1964), and that "[c]ompetition in the marketplace of ideas is the center of the electoral process and of the first amendment freedoms. Williams v.

Rhodes, 393 U.S. 23, 32 (1968). Once these freedoms are implicated, the state must demonstrate a "compelling" interest if the restriction is to survive judicial scrutiny. NAACP v. Button, 371 U.S. 415, 438 (1963). The Supreme Court has further held that the ". . .the First Amendment freedom to gather in association for the purpose of advancing shared beliefs is protected by the Fourteenth Amendment from infringement by any State." Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 121 (1981).

60. The Supreme Court has held "that claims of political gerrymandering (defined for the purposes of this complaint as the deliberate and arbitrary distortion of district boundaries for partisan purposes to provide advantages in future elections) lodged by members of one of the political parties that make up our two-party system are justi-

ciable under the Equal Protection Clause of the Fourteenth Amendment." Davis v. Bandemer, 478 U.S. 109, 126-127 (1986). Supportive of this holding, the Supreme Court has observed that "[i]ndiscriminate districting without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering Reynolds v. Sims, 377 U.S. 533, 578-79 (1964). To deter the possibilities of gerrymandering, the Court has recognized that "a State may legitimately desire to construct districts along political subdivision lines. . .". Id. at 581.

61. Although the Davis Court agreed that the claims of political gerrymandering had statewide effect, the plurality addressed the concerns of individual districts by stating that "[i]n a challenge to an individual district, this inquiry focuses on the

opportunity of members of the groups to participate in party deliberations in the slating and nomination of candidates, directly influence th election returns and to secure the attention of the winning candidate." Id at 132-133.

62. The Supreme Court and other federal courts have also recognized as a principle that any sort of gerrymandering, be it racial, religious, ethnic or political, is defensible, Cousins vs. City Council of the City of Chicago, 466 F.2d 830, 850, 852-53 (7th Cir. 1972), cert. denied, 409 U.S. 893 (1972), and that "a far greater potential threat to equality of representation [was] the gerrymander", as it is "profoundly destructive of the apportionment goal of 'fair and effective representation.'" Karcher, 462 U.S. at 776, 787 (White, J. and Powell, J. dissenting), and that "any distinction between racial and geographic discrimination is artificial

and unrealistic, Dyer v. Kazuhisa Abe, 138 F.Supp. 220, 236 (D. Hawaii 1956).

63. Finally, in discussing the legitimate criteria to be followed in drafting a constitutional districting plan, this Court has stated that "[a] basic goal [in drafting the Court's plan] has been to achieve the requirements of equality laid down in the Supreme Court decisions without doing unnecessary violence to the heart of existing districts, county lines, and district lines within the counties and ward lines in the city. We think that our plan makes the districts as compact as possible, and in the few cases where it was deemed necessary to split a county we have taken into account the character of the neighborhoods involved. In short, we have given dominant weight, as we think we must, to the population factor, without sacrificing other relevant considerations." Maryland Citizens

Committee for Fair Cong. Redist. v. Tawes, 253 F.Supp. 731, 734 (D.Md. 1966), aff'd sub nom Alton v. Tawes, 384 U.S. 315 (1966).

64. The individual plaintiffs, as citizens of the United States and as citizens of and registered and qualified voters of the State of Maryland, are entitled to vote for members of the United States House of Representatives and to cast votes that are equally effective as the votes of every other citizen of the State under Article I, Section 2 and the Fourteenth Amendment of the Constitution of the United States.

65. The Committee plaintiffs, as salient and cognizable groups, consisting of registered and qualified voters of the State of Maryland, are constitutionally permitted to effectively influence the political process by participating in party deliberations,

slating and nomination of candidates, and registering voters.

66. In enacting HB 10, the General Assembly failed to make any good-faith effort to achieve precise mathematical equality among the congressional districts, and adopted a districting plan unrelated to fair representation in government, purpose drawn in accordance with gerrymandering principles.

67. HB 10 was adopted by exclusive legislative process, and the district lines as drawn are reflective of its discriminatory, arbitrary, and invidious intent to deprive plaintiffs of an opportunity to effectively participate in the political process.

68. The absence of good-faith effort and the discriminatory intent underlying HB 10 are further evidenced by the failure of the General Assembly to consider or adopt other districting plans which were available to it and

which resulted in less deviation from mathematical equality than HB 10, and which were not drawn on the basis of partisan interest, including House Bill 22 submitted by Delegate John Bishop (hereinafter "the Bishop plan"). The Bishop plan had a variance between the largest and smallest districts of 9 persons, and an average deviation between all districts of 2.5 persons. Furthermore, the Bishop plan did not unnecessarily disturb or fragment existing districts, political subdivisions or communities. The Bishop plan is attached hereto and incorporated by reference as Exhibit E.

69. Besides its failure to comply with the constitutional mandate of population equality among Maryland's congressional districts, HB 10 also violates any reasonable and/or neutral criteria applied to the evaluation of otherwise constitutional plans. Such

neutral criteria include the following: creating districts which are contiguous and compact; dividing counties into the fewest fragments necessary; avoiding the splitting of preexisting districts; recognizing communities of common social and economic interests; recognizing shifts in population occurring since 1980, and which will continue to occur throughout the 1990s; preserving the core constituencies of previously existing districts; attempting to pit as few incumbent congressmen as possible against one another in contested elections; and recognizing the right of political groups or associations to effectively influence the political process.

70. Certain of the congressional districts created by HB 10 are laboriously and elaborately twisted, elongated and contrived to such an extreme and excessive degree as to make their

configuration constitute a further deprivation to the residents affected thereby of their right to an equal and meaningful vote in congressional elections, and were devised for partisan purposes and upon motivations which establish the absence of good faith, and constitute an insult to the residents affected thereby (See Article by Tom Bowman, Baltimore Sun, October 25, 1991, attached hereto and incorporated by reference as Exhibit F). Similarly, and with the same effect, certain of the districts created by HB 10 totally evade compactness and divide certain counties into an unnecessarily excessive number of fragments, fail to recognize communities of common social and economic interests, and force incumbent congressmen to run against one another.

71. HB 10 is therefore violative of the constitutional rights of plaintiffs under Article 1, Section 2, the

First Amendment and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

72. The adoption of HB 10 has and will continue to deny plaintiffs' right to vote and to effectively influence the political process and is further evidence of an effective denial to a minority of voters of a fair chance to influence the political process.

73. The adoption of HB 10 constitutes an arrangement of the electoral system in a manner which will consistently degrade plaintiffs' individual and collective influence on the political a process, as a whole, by a cynical and masked arbitrary and invidious legislative action which at a maximum paid lip service to any constitutional notion of fair and effective representation in government without regard to the will of the voters, but was in furtherance of the deliberate and

arbitrary motives set in motion by a group of incumbent congressmen to create new safe seats and preserve and perpetuate old ones.

74. Accordingly, immediate action by this Court is necessary to ensure that the 1991 congressional elective process, and subsequent elections, are conducted timely and pursuant to a districting plan that meets constitutional requirements. Prompt judicial action is necessary in order to eliminate confusion among potential candidates and voters, and in order to avoid a breakdown in the smooth functioning of the electoral process in the State of Maryland.

WHEREFORE, plaintiffs request that the three-judge court convened to hear this action as required by 28 U.S.C. Section 2284(a):

(a) Declare unconstitutional and contrary to law the eight congressional

districts created by HB 10 in 1991;

(b) Preliminary and permanently enjoin and restrain the Secretary of State of the State of Maryland from receiving or filing nominating petitions for candidates for membership in the House of Representatives for the Primary Election now scheduled for March 3, 1992 in the districts created by HB 10;

(c) Preliminarily and permanently enjoin and restrain defendants from taking any steps toward the nomination of candidates in the Primary Election for the office of member of the House of Representatives in the districts created by HB 10;

(d) Preliminarily and permanently enjoin and restrain defendants from ordering or conducting either the Primary Election scheduled to be held March 3, 1992 until there has been adopted a constitutional plan for reapportionment;

(e) Set an immediate date for a hearing with respect to the aforementioned relief;

(f) Set a deadline of December 1, 1991 by which time a new Redistricting Plan must be passed by the General Assembly of the State of Maryland, signed by the Governor into law, and submitted to this Court for review and approval under this Court's continuing jurisdiction; or, in the alternative, enter an order providing that all interested parties shall submit proposed redistricting plans to this Honorable Court by December 15, 1991; and thereafter by its judgment order into effect such proposed plan as best meets constitutional requirements;

(g) Retain jurisdiction of this action in order to ensure that defendants comply with any congressional redistricting plan promulgated by this Court;

(h) Award plaintiffs their costs and all reasonable attorney's fees and disbursements in connection herewith pursuant to 42 U.S.C. Section 1988; and

(i) Order such other and further relief as may be appropriate.

Respectfully submitted,

Attorney for the Plaintiffs

Dated this 12 day of November, 1991.

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